

Supreme Court No. 79265-8
Court of Appeals No. 33240-0-II

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,
Respondent,

vs.

A.C.,
Appellant/Petitioner

Clallam County Superior Court
Cause No. 04-8-333-9
The Honorable Judge George L. Wood

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RESPONSE TO PETITION FOR REVIEW

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II. ISSUES REQUESTED FOR REVIEW

Issue 1: Does a juvenile charged with a serious offense have the right to a jury trial under the Washington State Constitution, even if others do not?

Issue 2: Does the legislature's failure to define assault (and the judiciary's development of the core meaning of that crime) violate the constitutional separation of powers?

III. STATEMENT OF THE CASE

Respondent is satisfied with the statement of the case as provided by A.C.

IV. THE SUPREME COURT SHOULD NOT ACCEPT REVIEW OF THIS CASE. EVEN THOUGH THE CASE DOES INVOLVE QUESTIONS OF CONSTITUTIONAL LAW THE SUPREME COURT OF WASHINGTON HAS ALREADY DECIDED THESE ISSUES. THE COURT OF APPEALS FOLLOWED THE PRECEDENT SET FORTH BY WASHINGTON STATE SUPREME COURT WHEN RENDERING ITS OPINION.

A. Washington State Constitution is not violated by RCW 13.04.021(2).

Washington Constitution Article I

Section 21 Trial by Jury.

The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

Section 22 Rights of the Accused

In criminal prosecutions the accused shall have the right to appear and defend in person, or by appellant, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed. [AMENDMENT 10, 1921 p 79 Section 1. Approved November, 1922.]

The sixth amendment to the United States Constitution provides that “in all *criminal prosecutions*, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...” State v. Schaaf, 109 Wn.2d 1, 5, 743 P.2d 240 (1987). Juvenile proceedings are not equated with criminal prosecutions; therefore the Sixth amendment does not apply to juvenile proceedings. State v. Lawley, 91 Wn.2d 654, 658, 591

P.2d 772 (1979). In Lawley, the Court found that McKeiver was controlling as to the federal constitution and decline to adopt a more stringent rule under the Washington State Constitution. McKeiver v. Pennsylvania, 403 US 528, 541, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971), Lawley, at 659. The reason for the declination was the provisions of both the Federal and State constitutions provide a right to a trial by jury for criminal prosecutions. According to Lawley, philosophy and methodology of addressing the personal and societal problems of juvenile offenders has changed but not converted the procedure into a criminal offense atmosphere comparable with adult criminal offenses. Lawley at 659. Juvenile offenses are not akin to criminal prosecutions therefore, Washington State Constitution is not violated by RCW 13.04.021(2).

A.C. argues that absent controlling precedent, a party asserting that the State Constitution provides more protection than Federal Constitution must analyze the issue under Gunwall. State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986). Schaaf is controlling precedent,

After full consideration of all aspects of the matter, new, and previously raised, we conclude that we should remain with the majority of the states which deny jury trials in juvenile cases. Our examination of the Gunwall factors leaves us convinced that juvenile offenders are not

entitled to jury trials under our state constitution. This particularly true with respect to preexisting state law factor, and the statutory insistence of long standing that there be a unique juvenile justice system in this state. Weighed with our consideration of this long-standing precedent is our previous discussion of the current state of the law governing juvenile offenders, under which juvenile proceedings are still distinguishable from adult criminal prosecution, both in terms of procedure and result. We conclude that jury trials are not necessary to fully protect a juvenile offender's rights.

Schaaf at 16.

The Supreme Court in Schaaf, has previously made a Gunwall analysis of this issue and set binding precedent that jury trials are not necessary to fully protect juvenile offender's rights.

In J.H., notwithstanding the adoption in 1997 of amendments to the juvenile justice code tending to make it more punitive, we recognized the "unique rehabilitative nature of juvenile proceedings" as a continuing rationale for having judges, not juries, decide cases involving juvenile offenders. We conclude that "the juvenile justice provisions as amended still retain significant differences from the adult criminal justice system and still afford juveniles special protections not offered adults." State v. J.H., 96 Wn.App. 167, 186-87, 978 P.2d 1121 (1999). "In short, recent decisions do not compel a change to well-established precedent holding

that non-jury trials of juvenile offenders are constitutionally sound.”

State v. Tai N., 127 Wn.App. 733, 740, 113 P.3d 19 (2005).

There is controlling precedent in Schaaf that has been affirmed time and time again, including recent decisions which discuss and reject the changes in the treatment of juveniles and the argument that those changes now make the juvenile system akin to the adult system. In re the Dependency of: A.K., 130 Wn.App. 862, 884, 125 P.3d 220 (2005), State v. Meade, 129 Wn.App. 918, 120 P.3d 975 (2005); State v. Tai N., 127 Wn.App. 733; State v. J.H., 96 Wn.App. At 186-87, State v. Watson, 146 Wn.2d. 947, 51 P.3d 66 (2002). The Washington State Constitution is not violated by RCW 13.04.021(2).

A.C. was not denied a right to a jury trial because such a right does not exist for juvenile proceedings, therefore A.C. conviction must be affirmed.

B. Penalties and procedures in the juvenile justice system remain significantly different from those under the adult criminal system, regardless of the level of the crime committed, and focus on the needs of the offender and on the goal of rehabilitation, rather than on punishment.

The continued existence of difference in the juvenile justice system versus the adult criminal system compels a conclusion that a jury trial

does not apply to juvenile proceedings, regardless of the seriousness of the offense. State v. J.H., 96 Wn.App. at 167. Appellant argues that there should be differentiation between serious offenses and non serious offenses. Serious offenses requiring a jury trial because the appellant is not entitled to all the special rehabilitative programs available under the juvenile justice system. Appellant may not have been eligible for the alternative dispositions offered by the juvenile justice act but that does mean appellant is not offered rehabilitation programs while incarcerated.

A.C. is held at a Juvenile Rehabilitation Administration (JRA) agency, geared towards rehabilitating A.C. The programs available in JRA offer the best mental health services, sex offender treatment services, physician services, victimization services, behavioral services, chemical dependency services, educational services, vocation training, life skills training and more. Because the services offered come from JRA and not the local community does not lessen the degree of rehabilitation offered to A.C. through the juvenile justice system.

One of JRA's primary functions is to rehabilitate our youth and it is accomplished with the following programs that JRA offers, the list is not exhaustive:

1. JRA provides a continuum of care when a youth is incarcerated until release through an Integrated Treatment

Model which is a research based treatment approach that utilizes cognitive behavioral and family therapy principles.

While incarcerated JRA focuses on eliminating problem behaviors using behavioral analysis for targeted behavior change. Focus on behavior change through shaping, reinforcement, extinction, and contingency management to develop new skills. Families are included in these programs so the behavior change can continue once the youth is released.

Once a juvenile is released parole counselors work to engage and motivate all family members by creating a balanced alliance with each, and creating a family focus for treatment.

2. Educational Services: basic and special education, diploma and GED opportunities, juvenile vocational industries program, on-campus work experience training program (fish hatchery, culinary arts, waste water management, small engine repair, and others), extensive vocational training programs, student intern program, community placement in vocational areas, DNR forest and fire fighting training and crews, dog training for service animals and basic training camp staging.
3. Treatment Options: alcohol and drug treatment including residential treatment, off campus recovery houses, relapse prevention programs, acute and extended mental health facility, psychiatric services, psychotherapy services, psychological services, pharmacological management, basic health care, anger management, dental services, sex offender treatment.
4. Specialized Programs: Victim awareness program, Aggression Replacement Therapy, cognitive behavior therapy, dialectical behavior therapy, high and low ropes activities, moral reconnection therapy, criminal thinking errors, seven habits of highly successful teens, recreational services, and family outreach.

5. Chaplaincy Program/spiritual program

6. Cultural Programs.

These programs are not exhaustive of the programs that JRA provides the youth. However, just reviewing the list above of the opportunities available to youth held at JRA illustrate that treatment of youths are not akin to adults. Rehabilitation is still the focus for the youth through the juvenile system.

Petitioner also draws the conclusion that adult and juvenile systems are akin because increasing numbers of juveniles adjudicated in the juvenile system are being housed in adult prisons. That is incorrect. Juvenile offenders adjudicated in the juvenile system will remain in the custody of JRA until their release date or until the age of twenty one at which time they will be released from JRA. Additionally JRA provides the youthful offender program for the State, so if a juvenile is declined and tried as an adult then the juvenile will be housed with JRA until that juvenile's eighteenth birthday at which time JRA will have the eighteen year old submit to assessments to determine whether it is safe to release that eighteen year old to DOC prison system or to keep them at JRA.

The Legislature when setting a standard range for a sentence, do so with the purpose as set forth by RCW 13.40.010(2), "It is the intent of

the legislature that a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders...”. A.C. was convicted of serious crimes and serious violent crimes and sentenced to the standard range. Defense’s own expert prior to trial indicated if convicted that A.C. would be best served at JRA for an extended period of time and the State’s expert witness agreed that JRA would provide the rehabilitation. These opinions were given by the experts viewing what was available through the adult system and DOC versus the juvenile system and JRA.

The Legislature set the standard range with the understanding the time frame would address the needs of youthful offenders and that rehabilitation take place in JRA.

The seriousness of the offenses has been taken into account by the Legislature when setting sentencing ranges with the purpose behind it to respond to the needs of the youthful offenders. The courts in a long line of cases have found that because juvenile proceedings are uniquely rehabilitative in nature juveniles are not entitled to jury trials. In re the Dependency of: A.K., 130 Wn.App. 862; State v. Meade, 129 Wn.App. 918; State v. Tai N., 127 Wn.App. 733; State v. J.H., 96 Wn.App. 167; State v. Schaaf, 109 Wn.2d 1; State v. Lawley, 91 Wn.2d 654; McKeiver

v. Pennsylvania, 403 US 528, 541. The level of seriousness of the offense does not change the purpose of the juvenile justice act.

The seriousness of the offense does not change that the purpose of the juvenile justice is rehabilitative in nature. A.C.'s level of the offense does not mandate a change in legal precedent, juveniles are not entitled to a trial by jury. Therefore, A.C.'s conviction must be affirmed.

C. **The Judicial definition of assault does not violate separation of powers because the Legislature has historically left it to the Courts to define assault with common law principles.**

The division of our state government into three separate but coequal branches has been "presumed throughout our state's history to give rise to a vital separation of powers doctrine. Carrick v. Locke, 125 Wn.2d 129, 135, 882 P.2d 173 (1994). Our state constitution contains separate provisions establishing the Legislative (Article II), the Executive (Article III), and the Judiciary (Article IV) and, as such, provides for separation of functions. ." Spokane County v. State of Washington, et al, 136 Wn.2d 663, 667, 966 P.2d 314 (1998). The doctrine acknowledges three separate branches of government, each of which has individual integrity so as to guarantee the totality of the

governing power is not concentrated in singular hands. Carrick at 134-35.

While the primary purposes behind the separation of powers doctrine is to ensure that the fundamental functions of each branch remain inviolate, the doctrine does not require the three branches to be "hermetically sealed off from one another." Spokane County at 667, (quoting Carrick v. Locke, 125 Wn.2d 129, 135, 882 P.2d 173 (1994)).

In cases where a separation of powers violation is alleged, the question to be asked is not whether two branches of government engage in coinciding activities, but rather whether the activity of one branch threatens the independence or integrity or invades the prerogatives of another. Spokane County at 668. However the separation of powers doctrine allows for some interplay between the branches of government. Spokane County at 672.

A.C. argues that the separation of powers has been violated but that is incorrect. The Legislature historically has left it up to the courts to define assault in accordance with common law principles. See, e.g. State v. Carlson, 65 Wn.App. 153, 828 P.2d 30 (1992) (noting that the courts must rely upon common law definitions because the criminal code does not define assault). State v. Brown, 94 Wn.App. 327, 972 P.2d 112 (1999). Moreover, the legislature has instructed that the common law

must supplement all penal statutes. RCW 9A.04.060, ratifies the judicial practice of supplying common law definitions to statutes.

Because interplay is allowed by the agencies it cannot be argued that there is a violation when the Legislative branch has not defined assault but has instructed the judiciary to define assault according to common law principles.

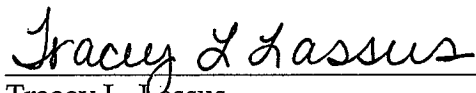
The separation of powers doctrine has not been violated. Therefore, A.C.'s conviction for Assault in the Second Degree should be affirmed.

V. CONCLUSION

The issues here have already been decided by the Washington State Supreme Court. This Court should not accept review pursuant to RAP 13.4(b)(1) because the decision of the Court of Appeals is not in conflict with the precedent set by this Court.

DATED this 19th day of June, 2007.

DEBORAH S. KELLY, Prosecuting Attorney



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Deputy Prosecuting Attorney
Attorney for Respondent

WBA #31315

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

A.C., Appellant

NO. 79265-8

AFFIDAVIT OF SERVICE BY MAIL

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STATE OF WASHINGTON)

: ss.

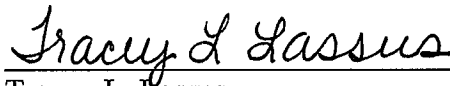
County of Clallam)

The undersigned, being first duly sworn, on oath deposes and says:

That the affiant is a citizen of the United States and over the age of eighteen years; that on the 19 day of June, 2007, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope containing a copy of the Response to Petition for Review, addressed as follows:

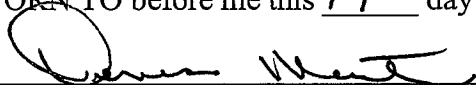
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Tracey L. Lassus

SUBSCRIBED AND SWORN TO before me this 19 day of June, 2007.


Teresa Martin

NOTARY PUBLIC in and for the State of Washington
Residing at Port Angeles, Washington
My commission expires: 10-1-08

AFFIDAVIT OF SERVICE